

THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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| In re Application of | |
| Inventors: Takaaki SHIMADA et al. | : Confirmation No. 8968 |
| U.S. Patent Application No. 10/764,589 | : Group Art Unit: 3761 |
| Filed: January 27, 2004 | : Examiner: Melanie Jo Hand |
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For: PANTS-TYPE DISPOSABLE WEARING ARTICLE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: Board of Patent Appeals and Interferences

SUPPLEMENTAL REPLY BRIEF

Further to the supplemental Examiner's Answer mailed on April 24, 2009, in connection with the above-identified application on appeal, herewith is Appellants' Supplemental Reply Brief.

To the extent necessary, Appellants hereby request any required extension of time under 37 C.F.R. §1.136 and hereby authorizes the Commissioner to charge any required fees not otherwise provided for to Deposit Account No. 07-1337.

ARGUMENT

The rejection of claims 4-6, 11-16 and 18-22 as obvious under 35 U.S.C. 103(a) over one or more of Okuda (JP 2001 157690), Hall et al. (US 2004/0006323), and Posniak et al. (US 6,045,543) is hereby traversed for the previously-presented reasons advanced in Appellants' Appeal Brief. Appellants hereby respond to selected portions of the supplemental Examiner's Answer (EA) mailed April 24, 2009.

Claim 4 recites a pants-type disposable wearing article, comprising, *inter alia*, "a plurality of leg-surrounding elastic members extending along said crotch lateral zones in the leg-surrounding directions, respectively, and being contractible in said leg-surrounding directions, respectively...." The combination of applied references fails to disclose at least this feature.

In paragraph 10 of the Examiner's supplemental answer, the Examiner asserts that, notwithstanding the specification of Okuda specifically identifying designated structures 21 as "elastic members 21 and 22 along the trunk part and along the width direction around the trunk part on the back side part," the Examiner maintains their position that waist structures 21 meets all the structural limitations of the "leg-surrounding elastic members of claim 4. Appellants respectfully disagree.

Okuda, in paragraph [0012], specifically states that elastic materials 21 are waistline elastic materials to prevent any leakage through the waistline, "the inside edge of the waistline elastic materials 21 in the width direction positioned closest to the center D of the longitudinal undercrotch of the diaper is preferably apart from the undercrotch center D by 20% or more of the total length of the diaper." In other words, waistline elastic material 21 is specifically designed to prevent leakage through the waist by maintaining a minimum distance L from the undercrotch center, and therefore are designed not to extend towards the crotch lateral area, as recited in claim 4, to as to surrounding the leg.

Still further, Okuda clearly discloses, in paragraph [0004] and Fig. 1, wherein waistline elastic material 21 is disposed ONLY on the dorsal portion A, i.e., the rear of

the assembled diaper. Okuda fails to disclose, teach, or suggest waistline elastic material 21 disposed on a ventral portion B, i.e., the front of the diaper, and therefore is clearly distinguished from Appellants' diaper in that claim 4 specifically recites "leg-surrounding elastic members." Absent elastic members 21 in the ventral portion B, of the diaper, to complete at least the frontal portion of a leg-surrounding member, Okuda cannot, and indeed does not, suggest a "leg-surrounding" elastic member.

The laminate 70, disclosed by Hall, similarly fails to suggest the leg-surrounding feature recited by Appellants. As depicted in FIGs. 2 and 3 of Hall, elastomeric composite 60 comprises elastic strands 64, composite 60 being sandwiched between facing sheets 70, 72 to form laminate 70 of the diaper depicted in FIG. 8. As illustrated in FIG. 8, laminate 70 is not configured as a leg-surrounding material and more specifically, strands 64 are not leg-surrounding members.

Appellants respectfully submit, therefore, that claim 4 is patentable at least due to the failure of Okuda and Hall to disclose, teach or motivate all claimed features.

Claims 5-6 and 22 depend variously from independent claim 4 and are likewise patentable over the asserted combination of references art for at least their dependence on an allowable base claim, as well as for the additional features they recite. Accordingly, reversal of this rejection is respectfully requested.

Independent claims 11 and 18 are similar to claim 4 and are patentable at least based upon the argument presented above in regards to claim 4, and incorporated herein.

Claims 12 and 19-21 depend variously from independent claims 11 and 18 and are likewise patentable over the asserted combination of references art for at least their dependence on an allowable base claim, as well as for the additional features they recite. Accordingly, reversal of this rejection is respectfully requested.

CONCLUSION


For the extensive reasons advanced above and in Appellants' Appeal Brief and Reply Brief, reversal of the rejection is in order.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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